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ABSTRACT

This paper examines five selected court cases concerning state control over private home education. According to the author, the cases were selected on the basis of their relevancy to the subject, but no attempt was made to ascertain their representativeness. The cases discussed include State v. Peterman, Wright v. State, People v. Turner, and Meyerkorth v. State. In addition, the appendix analyzes the case of Wisconsin v. Yoder. From studying these cases, the author concludes that private home schools may operate where state regulations permit, if they employ a qualified teacher and use an educational program and schedule that conforms with acceptable educational practice. (JG)

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SELECTED LEGAL CASES ON STATE CONTROL OVER PRIVATE HOME EDUCATION

by

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Foreword

This paper had its beginning in 1963 in the author's doctoral study program in Educational Administration at Indiana University. The writer claims no legal training and expertise beyond that provided generally for educational administrators, who in their advanced studies, take a normal healthy interest in the legal aspects of education.

SELECTED LEGAL CASES ON

STATE CONTROL OVER

PRIVATE HOME EDUCATION

Private education is both the largest and oldest field of education. Children begin their education in the home; drop-outs, graduate and senior citizens make use of a wealth of privately provided educational resources through lifelong education. In the larger context of education and learning, private education includes, among others, home education, religious education, industrial and business education, on-the-job training, apprenticeship, education through mass media, learning through travel, and recreational development.

Education flourished long before the advent of formal schools. And the first schools were private ones conducted in a home setting. Only when the concept of compulsory education was widely accepted would a citizenry permit itself to be taxed for this "common good" of public education.

Compulsory education, for many years, was considered as "the education." With a deeper understanding of child development, university education for the masses, and lifelong learning, compulsory education--and with this, public education--is now generally understood to concern itself with a somewhat minimal educational level.

The states have from the beginning been concerned primarily with this compulsory-education stage. They have full control over compulsory public education--a control that they share with the local school boards. But how much control does the state have over private education?

The purpose of this paper is to examine four selected cases concerning state control over one specific area of private education, namely, private home education. The cases were selected on the basis of their relevancy to the subject. They may or may not represent the literature in this field; no attempt was made to ascertain the representativeness of the cases.

Case One:

State v. Peterman, 32 Ind. App. 665, 70 N. E. 550 (1904)

Facts:

A parent, Mr. Peterman, employed a former, certified, public school teacher to teach his child after he had been served notice by the truant officer. The child studied in the living room of the teacher, Mrs. Hegelheim, without school equipment but following the program, hours, and days of instruction of the public schools. Mrs. Hugelheim did not advertise herself as keeping a private school and charged no regular fixed tuition. Mrs. Hugelheim had never been refused a teacher's license but had quit public-school teaching because she had decided to marry. Mr. Peterman's child had been withdrawn from public school because of differences with the teacher and the school administration. Peterman was prosecuted for violating the compulsory-education law and was acquitted. The state appealed.

Issues:

1. What constitutes a private school?
2. Why does the state have a compulsory-education law?

Decision:

The court affirmed the judgment of the lower court that Mr. Faterman was not guilty of violating the compulsory-education law.

Reasons:

In support of the decision, Judge C. J. Henley wrote that:

1. "A school, in the ordinary acceptation of its meaning, is a place where

instruction is imparted to the young. If a parent employs and brings into his residence a teacher for the purpose of instructing his child or children, and such instruction is given as the law contemplates, the meaning and spirit of the law has been fully complied with" (551).

2. And on compulsory education: "Its purpose is 'to secure to the child the opportunity to acquire an education'...The results to be obtained, and not the means or manner of attaining it, was the goal which the law-makers were attempting to reach."

The court considered the defendant's fulfillment of the general purposes of both the school and the compulsory-education law grounds for acquittal.

Case Two:

Wright v. State, 21 Okla. Cr. 430, 209 Pac. 179 (1922)

Facts:

Mrs. Wright, a graduate of a normal training school, taught her eight-year-old daughter at home for a period of about five hours each day the subjects commonly followed in the public school curriculum. The father, E. D. Wright, an experienced public and private school teacher, assisted in the instructions. Exhibits of the child's work were offered and showed considerable proficiency. The case grew out of disputes arising over school management and school discipline affairs, and out of the fact that E. D. Wright, a member of the Seventh-day Adventist Church, desired to have his child trained in a particular religious atmosphere. E. D. Wright was convicted at the county court of Major County of violating the compulsory-school law and punished by a fine of $25 and cost, amounting to $131.45. Mr. Wright appealed.

Issues:

1. May a court prescribe the hours of instruction for home tutoring?
2. May a court require certification of home tutors when no certification is required of private school teachers?
3. Does a parent have the right to manage and supervise the education of his child?
4. Does a demonstration of a child's educational proficiency constitute a proof that the child's education is not neglected?

Decision:

The judgment of the trial court that Wright was guilty of violating the

compulsory-school-attendance law was reversed by the higher court.

Reasons:

1. The court described the judgment of the lower court prescribing instruction for four weeks a month, five days each week, for six hours per day, as erroneous.
2. On teacher certification, Judge J. Bessy stated: "The statute makes no provisions fixing the qualifications of private teachers, or teachers in private schools or academies, or to prescribe definite courses of study in such cases. Of course, if such schools or institutions were manifestly inadequate...the statute could then be properly invoked."
3. On parent rights and educational proficiency: "So long as the child's education was not neglected, we think the parents, under the constitution and laws of this state, had a right to manage and supervise the education of their child, if done in a fitting and proficient manner. The proof is not at all convincing that the education of this child was being in any way neglected."

The court concluded that a parent of a child that is taught at home by competent instructors is not liable to penalties under the compulsory-education law.

Case Three:

People v. Turner, 261 C.A. 2d. Supp 861, 263 P 2d. 685 (1953)

Facts:

Turner, who had his three children instructed at home, was convicted in the municipal court, Los Angeles Judicial District, of violating the compulsory-education law and was fined $10 for each child. Turner appealed the case on the grounds that the state did unconstitutionally deprive parents of the right to determine how and where their children should be educated.

Issues:

1. May the state require all children to attend public school?
2. May the state prescribe conditions for private schools?
3. Is it discriminatory to require valid state credentials for home instruction and not to require teachers in exempted private schools to hold such credentials?
4. Does the term "private school" comprehend a parent or private tutor instructing at home?
5. Is proof of proper instruction and study a defense to prosecution for neglecting and refusing to send children to public school?

Decision:

The judgment against Turner for violating the compulsory-education law was affirmed.

Reasons:

1. The case of Pierce v. Society of Sisters affirms the point that the state has no right to "without qualifications or exceptions, require parents to place their children in public schools," but the state does have the power "reasonably to regulate all schools, to inspect, supervise and examine them, their teachers, and pupils, to require that all children of proper age attend some school."
2. On the certification of home instructors, the court stated: "The most obvious reason for such difference in treatment is...the difficulty in supervising without reasonable expense a host of individuals, widely scattered...as compared with the less difficult and expensive supervision of teachers in organized private schools." (689)
3. A school has to be approved as a private school as required by the state in order to be an approved private school.
4. Equivalent booklearning is no substitute for sending a child to school, for "The statute makes no exception to the duty imposed. The only substitute for the public school is an approved private school." (689)
5. The court upheld Education Code 16601 which states that "a tutor may be hired to teach children at home...however must hold a valid state teaching certificate for the grade actually being taught."

The court felt that the compulsory-education law, as applied to approved private schools, and the certification requirement of home instructors did not unconstitutionally deprive parents of the right to determine how and where their children should be educated.

Case Four:

Meyerkorth v. State, 115 NW 2d. 585 (1962)

Facts:

Mrs. Lila Meyerkorth of Nebraska and other parents, who were members of a religious organization called Emmanuel Association, had employed Elenor Berry, who held no valid teacher certification, to teach their children in a particular religious atmosphere. The county superintendent of schools and the Commissioner of Education had attempted to close the school and had threatened criminal and other proceedings to compel them to send their children to other available schools.

Issues:

1. Is a law restricting the parental control over children unconstitutional on the ground that it prohibits free exercise of religious beliefs, and is it a void attempt to exercise the police power of the state?
2. May the state close a school operated for religious reasons?

Decision:

The power of the state to control the education of all children through compulsory school attendance, certification of teachers, and supervision of parochial schools was affirmed as constitutional, and the insistence of the state for a qualified teacher was upheld.

Reasons:

1. The court stated that "there is no interference with religious liberty where the state reasonably restricts parental control, or compels

parents to perform their natural and civil obligation to educate their children." (594)

2. The right of religious freedom is not involved in this case because the parents are free to employ a certified teacher and set up a private school in conformity with state regulations.

In concluding the review of the four cases, it may be stated that:

1. Within the framework of state regulations, private schools educating children of compulsory school age may freely operate.
2. All private education of children of compulsory school age must be conducted within the setting of a "recognized" private school, or, where state regulations permit, the equivalent of a "recognized" private school.
3. Where state regulations permit, the equivalent to a private school may be a private home school consisting of a qualified (certified or eligible for certification) teacher and an educational program and schedule in conformity with acceptable educational practice.

Other cases, not reviewed in this paper, give a somewhat broader interpretation to the equivalency of a private school in not requiring teacher certification. The issue of private home education, in many states, still awaits further legal action and clarification.

APPENDIX

COMPULSORY SCHOOL ATTENDANCE: WISCONSIN v. YODER

The legal issue of private home education relates closely to compulsory school attendance.

The Supreme Court of The United States held that the Wisconsin compulsory attendance law can not be enforced against members of the Old Order religion and the Conservative Amish Mennonite Church, who refused to send children to school beyond the eighth grade. Wisconsin v. Yoder, 92 S. Ct. 1526 (1972).

An article by Robert W. Nixon* presents the major issues:

WHY DO THE AMISH OBJECT TO COMPULSORY SECONDARY EDUCATION?

"Formal high school education beyond the eighth grade is contrary to Amish beliefs not only because it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners and ways of the peer group, but because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skill needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these traits, skills, and attitudes admittedly fall

*Nixon, Robert W. "Amish Win," Liberty, 67:4, July-August, 1972, pp. 4-9.

within the category of those best learned through example and 'doing' rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendance with teachers who are not of the Amish faith--and may even be hostile to it--interposes a serious barrier to the integration of the Amish child into the Amish religious community."

DOESN'T THE STATE HAVE A HIGH RESPONSIBILITY TO IMPOSE REASONABLE REGULATIONS FOR THE CONTROL AND DURATION OF BASIC EDUCATION?

"A State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children so long as they . . . 'prepare [them] for additional obligations.'

"It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interfers with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a State interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. . . . .

"We can accept it as settled, therefore, that however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests."

IF THE AMISH DON'T LIKE CERTAIN LAWS, WHY DON'T THEY MOVE ON?

"The danger to the continued existence of an ancient religious faith cannot be ignored simply because of the assumption that its adherents will continue to be able, at considerable sacrifice, to relocate in some more tolerant State or country or work out accommodations under threat of criminal prosecution. Forced migration of religious minorities was an evil which lay at the heart of the Religion Clauses."

AREN'T RELIGIOUS GROUNDED "ACTIONS" OR "CONDUCT"--AS OPPOSED TO BELIEFS--OUTSIDE THE PROTECTION OF THE FIRST AMENDMENT?

"Our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. . . . But to agree that religiously grounded conduct must often be subject to the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability."

In his dissent in part, Justice William O. Douglas looked at the issue this way: "The Court rightly rejects the notion that actions, even though religiously grounded, are outside the protection of the Free Exercise Clause of the First Amendment. In so ruling, the Court departs from the teaching of Reynolds v. United States. . . . It was conceded

that polygamy was a part of the religion of the Mormons. Yet the Court said, 'It matters not that his belief (in polygamy) was a part of his professed religion; it was still belief and only belief.'

"Action, which the Court deemed to be antisocial, could be punished even though it was grounded on deeply held and sincere religious convictions. What we do today, at least in this respect, opens the way to give organized religion a broader base than it has ever enjoyed; and it even promises that in time Reynolds will be overruled."

ISN'T SOME DEGREE OF EDUCATION NECESSARY TO PREPARE CITIZENS TO PARTICIPATE EFFECTIVELY AND INTELLIGENTLY IN OUR OPEN POLITICAL SYSTEM IF WE ARE TO PRESERVE FREEDOM AND INDEPENDENCE?

"The evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long established program of informal vocational education would do little to serve those interests. Respondents' experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith."

WON'T AMISH CHILDREN BE ILL EQUIPPED FOR LIFE IF THEY LEAVE THEIR RELIGIOUS COMMUNITY?

"That argument is highly speculative. There is no specific evidence

of the loss of Amish adherents by attrition, nor is there any showing that upon leaving the Amish community Amish children, with their practical agricultural training and habits of industry and self-reliance would become burdens on society because of educational shortcomings. Indeed, this argument of the State appears to rest primarily on the State's mistaken assumption. . . that the Amish do not provide any education for their children beyond the eighth grade, but allow them to grow in 'ignorance.' . . .

"We are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist."

SHOULDN'T AN AMISH CHILD HAVE THE RIGHT TO CHOOSE A SECONDARY EDUCATION, EVEN THOUGH HIS PARENTS OBJECT?

In his dissent in part Justice William O. Douglas said, "Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views." Justice Douglas pointed out that because the lower courts had questioned only one of the three children mentioned in the case--Frieda Yoder, who testified that her own religious views opposed high school education--he must dissent "as to respondents Adin Yutzy and Wallace Miller."

Speaking for the majority justices, Chief Justice Burger wrote: "The dissent argues that a child who expresses a desire to attend public high school in conflict with the wishes of his parents should not be prevented from doing so. There is no reason for the Court to

consider that point since it is not an issue in the case. The children are not parties to this litigation. The State has at no point tried this case on the theory that respondents were preventing their children from attending school against their expressed desires, and indeed the record is to the contrary. . . .

"Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary. Recognition of the claim of the State in such a proceeding would, of course, call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. . . .

"Indeed it seems clear that if the State is empowered . . . to 'save' a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child."

In a concurring opinion, Justice Byron R. White, joined by Justices William J. Brennan, Jr., and Potter Stewart, added: "It is possible that most Amish children will wish to continue living the rural life of their parents, in which case their training at home will adequately equip them for their future role. Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians,

and for these occupations, formal training will be necessary. There is evidence in the record that many children desert the Amish faith when they come of age."

Justice White agreed that the State has an interest in developing the talents of its children and preparing them "for the life style which they may later choose." But he concluded, "In circumstances of this case, although the question is close, I am unable to say that the State has demonstrated that Amish children who leave school in the eighth grade will be intellectually stultified. . . ."

WILL THIS DECISION PERMIT EVERY RELIGIOUS OR PHILOSOPHICAL GROUP TO SET ITS OWN EDUCATIONAL STANDARDS?

"It cannot be over-emphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children for modern life.

"Aided by a history of three centuries . . . the Amish . . . have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role which belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of . . . compulsory high school education."

The Court suggested "few other religious groups or sects could make" such a "convincing showing."

"Nothing we hold is intended to undermine the general applicability of the State's compulsory school attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that, in this related context, reasonable standards cannot be established. . ."